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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT
ASSOCIATION *et al.*,

Plaintiffs,

Case No. 06-523-HO

v.

DECLARATION OF
CRAIG MILLER

SHIRLEY GAMMON, Lakeview District
Manager, BLM, *et al.*,

Defendants.

I, CRAIG MILLER, state and declare as follows:

1. My name is Craig Miller and I reside in Bend, Oregon. The following matters are personally known to me, and if called as a witness I would and could truthfully testify thereto.

2. I am past president of the Board of Directors (and a current Board member) of Plaintiff Oregon Natural Desert Association (“ONDA”). I also am a charter member of ONDA and serve as a part-time, contract employee of ONDA as a Geographic Information Systems (“GIS”) Analyst.

3. As part of my work as a GIS Analyst for ONDA, I am also an active participant in ONDA’s wilderness inventory program. I performed inventory work in the field in a number of ONDA’s proposed WSAs or WSA Additions on the Lakeview District, including the Coglan

DECLARATION OF CRAIG MILLER

Buttes and Hart Mountain proposed WSAs. I also performed much of the GIS analysis and mapping once we had gathered our inventory data in the field, and helped prepare ONDA's final reports which we submitted to BLM.

4. I offer the following comments to help show why the BLM's wilderness inventory information for these areas, last collected primarily in the 1970s, is extraordinarily outdated and inaccurate. My statements are intended to demonstrate, among other things, that the BLM's decision to not update or collect information on wilderness values during the NEPA process for the Lakeview RMP makes the BLM's final decision uninformed and unsupported. If the public had had the opportunity to review and respond to the type of information ONDA later collected and provided to the BLM, I believe the inevitable conclusion would have been that many additional areas in the RMP area do indeed possess wilderness character. Those wilderness values should have been at least considered, if not affirmatively managed for, in the Lakeview RMP.

5. During the Lakeview RMP NEPA process the BLM refused to update its wilderness inventory information, which was collected in the 1970s during the agency's initial wilderness review process. Based on years of experience exploring Oregon's high desert, as well as on the first years of our Wilderness Research and Rescue program inventorying neighboring BLM districts, we knew the BLM's wilderness inventory information was simply out-of-date and inaccurate. Throughout the NEPA process, we urged the BLM to conduct new inventories and to update its information. The agency refused to do so.

6. When ONDA was able to perform its own wilderness inventory on the Lakeview District in 2004, we were not surprised to find more than a million acres of public land that quite easily fit the BLM's long-standing definition of "wilderness." The BLM's 2001 *Wilderness*

Inventory Study and Procedures handbook and its 1978 *Wilderness Inventory Handbook* both explain that wilderness is defined by: (1) size (5,000 acres or more); (2) naturalness; and (3) outstanding opportunities for solitude or primitive and unconfined recreation.

7. For example, ONDA's wilderness inventory report shows that the 424,570-acre Hart Mountain Proposed WSA possesses outstanding wilderness characteristics that BLM should have considered during the land use planning process. See AR Tab 3-3 at 87–120. This area is part of a broader landscape ranging from the Hart Mountain National Antelope Refuge to Beaty Butte to the Sheldon National Wildlife Refuge, which serves as critical migratory and wintering corridor for pronghorn antelope. It also contains outstanding sage grouse habitat, habitat for Sheldon tui chub, rare and special status plant species, invaluable cultural sites, and a quintessentially high desert wilderness setting.

8. *Roadlessness*. The distinction of what constitutes a “road” versus a “way” is a vital factor in determining wilderness character on the public lands. Using the BLM's own definition (defined in its 1978 *Wilderness Inventory Handbook*, p.9, and reiterated in its 2001 handbook), a “road” is a route that has “been improved and maintained by mechanical means to insure relatively regular and continuous use.” AR Tab 2-10 at 9. In other words, some form of mechanical maintenance must occur often enough to ensure regular or frequent use. For example, a portion of route 6132-0-00 (see photo EH-2)¹ is maintained at least annually, and clearly qualifies as a “road” under the BLM definition. The route here is free of vegetation, ruts, rocks, and other obstructions that would hinder “relatively regular and continuous use.” Other routes receive maintenance once every year or two, and can reasonably be considered “roads” as

¹ This photo and the others I refer to in this declaration are found under Tab 3-3 of the administrative record produced by the BLM. They are in the “Hart Mountain proposed WSA photos” subfolder in the CDs provided by the BLM. For ease of review, I have attached the photos, in the order I refer to them, to this declaration as “Attachment 1.”

well. On the other hand, if a route hasn't received maintenance for more than five years, is eroded, rocky, rough, overgrown, or otherwise inhibitive of frequent or regular use, it must be considered a "way," even if it was originally constructed by mechanical means some time in the distant past. Note for example photos EH-11 and EH-12 showing a portion of 6152-0-00 that is impassable for most vehicles, and obviously does not insure "regular and continuous use." The BLM definition of a "way" is a route "maintained solely by the passage of vehicles." AR Tab 2-10 at 9. Most of the routes ONDA has documented as "ways" have not seen mechanical maintenance for more than three decades.

9. A route that has received mechanical maintenance for a limited distance may ensure regular and continuous use for that portion of the route, but does not necessarily mean that the entire route meets the definition of a road.² In many cases, a route may be maintained a short distance (e.g. to a nearby reservoir), but then becomes a non-maintained way. The bottom line is that the *actual route condition* and *maintenance record* are what distinguish a "road" from a "way." This is why photographic documentation and maintenance records are so important when there is any doubt about whether a route is a "way" or a "road."

10. ONDA's report shows the Hart Mountain Proposed WSA meets the minimum size requirement because it consists of well over 5,000 contiguous acres of roadless public lands. The report documents that all of the routes the BLM determined in the 1970s to be "roads"—and therefore precluding the various "subunits" bounded by those routes from further consideration as wilderness—are properly classified as ways. AR Tab 3-3 at 88–92 (narrative), 95–96 (maps), 114–120 (road inventory log data); see also id. (photos under Tab 3-3). For example, photo EH-

² And, in fact, the BLM's 2001 handbook specifically indicates that a "dead-end (cherry-stem) road can form the boundary of an inventory area, and does not by itself disqualify an area from being considered 'roadless'." AR Tab 2-10 at 10.

24 shows a portion of 6152-0-00 that purportedly separates subunit 1-124 and an adjacent non-inventoried area on the east. This section of the route is so degraded that it is not passable even in a high-clearance 4-wheel drive vehicle.

11. *Naturalness.* An area must “generally appear[] to have been affected by the forces of nature with the imprint of man’s work substantially unnoticeable.” See AR Tab 2-10 at 12 (defining “naturalness” factor). Although there is a fair amount of leeway about how many unnatural features are acceptable, the most important question is whether the man-made features collectively dominate the landscape, and whether they cause the area to appear unnatural throughout. If a portion of the area appears predominantly unnatural, boundaries may be adjusted to exclude that portion from the proposal.

12. ONDA’s report shows the Hart Mountain Proposed WSA also meets the naturalness criterion. See AR Tab 3-3 at 92–93 (narrative description) and photos. Although many of the subunits included in the proposed WSA were ruled out in the original inventory conducted more than a quarter century ago because they appeared “unnatural” to the BLM at that time, the 2004 inventory revealed that most of the drilled seedings, ways, and reservoirs have become nearly obliterated by growing vegetation and natural forces so that they presently have no significant impact over the landscape (see photos DV-24, 29, 40, EH-7, 8, 9, 17, 19, 23, 31, 34, 38, 39, EL-4, 9, 12, 13, 18, 20, 21, 23, 37, 43, 51, 52, 56, 57).

13. *Outstanding Opportunities for Solitude or Primitive and Unconfined Recreation.* The third and final requirement needed to meet the wilderness definition is that the area must have one or both of the following assets: (1) outstanding opportunities for solitude; or (2) outstanding opportunities for primitive recreation. In general, opportunity for solitude is a function of area size, variability of terrain, and likelihood that an area will be visited. Primitive

recreation is any form of recreation that does not require wheeled vehicles, including hiking, backpacking, camping, fishing, hunting, wildlife viewing, photography, orienteering, natural science studies, spiritual quests, etc. In those situations where a WSA is enlarged by an adjacent roadless area (that is, ONDA's proposed "WSA Additions"), the WSA will necessarily have enhanced opportunities for solitude (because of an expanded surface area). Primitive recreation opportunities will also likely be enhanced because there will be more terrain to hike, hunt, view wildlife, camp, etc. In general, the larger the roadless area, the more its wilderness character is enhanced. See AR Tab 2-10 at 13–16 (defining "solitude" and "primitive recreation" factors).

14. ONDA's report shows the Hart Mountain Proposed WSA meets this factor too. See AR Tab 3-3 at 93–94 (narrative description) and photos. All the BLM subunits and non-inventoried areas included in the proposed WSA (including 1-123, 1-124, 1-125, 1-127, 1-128, 1-129, 1-130, 1-131, 1-132, and 1-133)³ are separated by routes that have not been maintained by mechanical methods for decades and have deteriorated into degraded, impassable, or nonexistent ways. Simply including these routes on the official BLM transportation map cannot alter the fact that they do not meet the definition of a "road" because they have not been maintained to "insure relatively regular or continuous use." The result is that the more than 200,000 acres of land managed by BLM in our Hart Mountain proposal is roadless.

15. In addition, this large area is contiguous with a nearly 200,000 acre roadless area in the Hart Mountain National Antelope Refuge, and also encompasses the Guano Creek Wilderness Study Area. The entire area (consisting of 424,570 acres) is much larger than any BLM designated WSA in Oregon, and would therefore provide unparalleled opportunities for solitude. Outstanding opportunities for primitive recreation have already been acknowledged in

³ See the maps at AR Tab 3-3 (pp. 95–96) for sub-unit labels (as well as photo point locations and other information) within the proposed WSA.

portions of the area such as the Guano Creek WSA and Hart Mountain National Wildlife Refuge. These opportunities can only be enhanced by the added areas that include lakes, streams, fascinating topographic features, wildlife, and rich archeological resources. The area is also home to sensitive species such as pygmy rabbit and sage grouse, and has been identified as Oregon's only sage grouse stronghold. J.W. Connelly *et al.* 2004. *Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats*. Western Association of Fish and Wildlife Agencies. Cheyenne, Wyoming. See also AR Tab 2-26 (FEIS Vol. 3, Map W-1) (showing sage grouse habitat within proposed WSA area, as well as 24 separate sage grouse lek sites), (Map W-2) (showing California bighorn sheep yearlong habitat, pronghorn antelope winter habitat, and mule deer winter habitat, within proposed WSA area); AR Tab 3-6 (Oregon Department of Fish and Wildlife's *Greater Sage-Grouse Conservation Assessment and Strategy for Oregon*).

16. Clearly, if BLM had taken a hard look at wilderness values in this area it may have at least examined alternatives that would provide greater conservation of this fragile resource. In the Lakeview RMP, for example, the agency leaves this area completely open to livestock grazing. AR Tab 2-26 (FEIS Vol. 3, Map G-3) (grazing allotments and allocations). About half the area is left completely open to cross-country travel by off-road vehicles. *Id.* at Map R-7 (showing about half of area designated as "open" and other half designated "limited to designated roads and trails). Although the exceptional wildlife values receive special protection in the portion of the proposed area within Hart Mountain NWR, they are virtually ignored on the other side of the fence on BLM-managed land. Off-road vehicle use and developments allowed by the RMP will have a significant negative impact on wilderness values. Structures such as cattle guards, pipelines, water tanks, and wells would irreversibly impair the wilderness character on these public lands.

17. Moreover, the agency's failure to undertake this duty during the Lakeview RMP process has had negative impacts as the RMP has been implemented. For example, in 2005 BLM issued a final decision authorizing a series of rangeland projects in the East and West Gulches near the summit of Beaty Butte on the Beaty Butte Allotment. During the NEPA process, ONDA asked BLM to consider the impacts of those projects on documented wilderness values in ONDA's Spaulding Proposed WSA Addition. See AR Tab 3-3 at 209–224 (Spaulding Proposed WSA Addition portion of ONDA's inventory report). We argued it was particularly crucial that the agency do so because it had failed to undertake this duty during the Lakeview RMP process.

18. BLM refused to do so and ONDA filed a lawsuit against the agency.⁴ I wrote a declaration in that case in which I assessed BLM Field Manager Thomas Rasmussen's statements (in his letter in response to ONDA's administrative protest) about ONDA's wilderness inventory information. In particular, I pointed out that ONDA's inventory report directly contradicted the BLM's assertions there that a "road number assignment" automatically assures "some minimal amount of maintenance." I searched BLM's road maintenance records dating back to 1998 and failed to find any indication of maintenance on the one route the Field Manager used as an example in rejecting ONDA's report findings. On the contrary, ONDA's photos of each numbered road in question show deteriorated, rocky, rutted, and overgrown ways with no evidence of even minimal maintenance.

19. The district court agreed with ONDA that BLM had failed to comply with its duty to consider how the project would affect the wilderness character of the area. The same should be true here and I believe it is even more important that BLM consider the impacts of its land uses on wilderness values at the broad, landscape level during the resource management planning

⁴ Ore. Natural Desert Ass'n v. Rasmussen, No. 05-1616-AS (D. Or. filed Oct. 21, 2005).

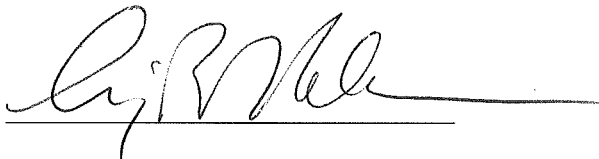
process. Only there can BLM take a truly comprehensive look at how wilderness values fit into the spectrum of multiple use values it is charged with conserving on our public lands.

Unfortunately the RMP did not make room for such a process to take place, despite ONDA's request that it do so. In fact, the RMP does not provide for consideration of wilderness values in any of the areas in which ONDA subsequently found to possess wilderness character and proposed as WSAs, although BLM is clearly required to do so by law.

20. ONDA is anxious to work with the BLM to arrive at an honest, sensible means of protecting our most valuable resources. These resources include habitat values that support important wildlife (including Western Sage Grouse, pronghorn, pygmy rabbit, Sage Sparrow, Brewer's Sparrow, Burrowing Owl), scenic values, and primitive recreational opportunities. We desire the BLM to be sensitive to the exceptional values that exist in the roadless areas identified by ONDA, and manage them appropriately. Unless the BLM is willing to take a serious look at these unique areas, their wilderness character is in danger of being lost forever.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 3RD day of November, 2006.

A handwritten signature in cursive script, appearing to read "Craig Miller", written over a horizontal line.

Craig Miller